

RESOLUTION NO. 2021-58

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
SETTING ADMINISTRATIVE FINES FOR VIOLATING PROVISIONS OF TITLE 5
CHAPTER 19.16 OF THE MARINA MUNICIPAL CODE AND DIRECTING CERTAIN
OTHER ACTIONS WITH REFERENCE TO ‘FIREWORKS VIOLATIONS’

WHEREAS, Marina Municipal Code (MMC) Section 1.08.010 provides for the violation of any provision or section of the Municipal Code, with certain exceptions not applicable to Fireworks Violations, to be prosecuted as a misdemeanor with discretion vested in the City Attorney to charge and prosecute such violation as an infraction or to invoke civil remedies; and

WHEREAS, California Government Code Section 53069.4 authorizes the City to make violations of the MMC subject to an administrative fine and penalty; and

WHEREAS, on May 4, 2021, the City Council adopted Ordinance 2021-02 adding Chapter 9.16 entitled “Fireworks Violations” to Title 5 of the MMC authorizing the imposition of administrative fines; and

WHEREAS, MMC Sections 1.12.010 through 1.12.110 set forth the administrative citation process; and

WHEREAS, the City Council now wishes to establish specific administrative fines related to violations of Title 5, Chapter 19.16 “Fireworks Violations;” and

WHEREAS, in accordance with Ordinance 2021-02 said administrative fines are imposed under the authority of Government Code Section 53069.4, Health and Safety Code Section 12557, and the police power of the city; and

WHEREAS, the city has and will continue to incur costs for the safe storage of confiscated Dangerous Fireworks as a result of the violation of Ordinance 2021-02 and now wishes to establish a hazardous materials disposal fee related to violation of Title 5, Chapter 19.16 “Fireworks Violations.”

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Marina as follows.

1. Effective Date. This resolution is effectively immediately.
2. Fine Amounts Established. The following amounts are established as fines imposed by administrative citations issued for violation of Title 5, Chapter 19.16 of the MMC “Fireworks Violations:”
 - (a) An administrative fine of \$.200.00 for a first-time violation.
 - (b) An administrative fine of \$400.00 for a second violation of the same MMC Code section by the same person within thirty-six months from the date of the first violation...

- (c) An administrative fine of \$1,000.00 for a third and any subsequent violation of the same MMC Code section by the same person within thirty-six months from the date of the first violation. In no event shall this increased fine amount exceed the amount established by California Government Code Section 36901 or as that section may be amended from time to time.

- 3. Late Charge. The following amount is established as a large charge for late payment of an administrative fine for violation of Title 5, Chapter 19.16 of the MMC :”Fireworks Violations:” The administrative fine, together with the hazardous materials disposal fee established in Section 4 below, must be paid within fifteen working days from the date the administrative citation is issued in accordance with MMC Section 1.12.080 D. Fines and fees not paid within 120 days may be sent to collections.

A late charge of \$25.00 for late payments of an administrative fine.

- 4. Hazardous Materials Disposal Fee. The following amount is established as the hazardous materials disposal fee, established by Title 5, Chapter 19.16, Section 9.16.030 C of the MMC “Fireworks Violations,” to be imposed upon persons responsible for a violation of MMC Chapter 19.16 in the amount of \$133.92, which fee is hereby found and determined by the City Council, based on the evidence and the written record before the City Council this date, to not exceed the reasonable cost to the City of providing for the necessary confiscation and safe storage of Dangerous Fireworks.
- 5. Advance Deposit Hardship Waiver. Staff is directed to develop criteria and to implement a policy for an advanced deposit hardship waiver of the requirement of MMC Section 1.12.080 D that an administrative fine be paid prior to a request by an offender for an administrative hearing pursuant to MMC Section 1.12.090 B.
- 6. Discharge of Safe and Sane Fireworks. Staff is directed to engage with volunteers to identify and arrange for designation of areas within the City for the discharge of safe and sane fireworks which may be legally discharged within the City from 12:00 o’clock noon on June 28 until 11:59 p.m. on July 4, 2021.
- 7. Community Service/Restorative Justice Alternative. Staff is directed to develop criteria for, but not to implement without prior Council direction, a procedure for the Hearing Officer, appointed pursuant to MMC Section 1.12.090 D, at his or her discretion, to require an offender to perform community service as an alternative to and in lieu of the payment of an administrative fine. Such program to be based in whole or in part upon principles of restorative justice as articulated by the County of Monterey Commission on Restorative Justice.
- 8. Enforcement Data. Staff is directed to provide a report to the City Council prior to April 15, 2022, including data on the number of administrative citations issued under the authority of MMC Chapter 9.16; the total amount of administrative fines paid; the number of administrative hearings held; and the number of individuals who performed community service in lieu of paying a fine for the period commencing June 4, 2021 through and inclusive of March 15, 2022.

9. Future Actions. Staff is directed to return to the Council prior to March 15, 2022, with a report on the effectiveness of a ban on the use of safe and sane fireworks in reducing the use of illegal fireworks and on fund-raising alternatives to the sale of safe and sane fireworks by non-profit organizations.

PASSED AND ADOPTED by the City Council of Marina at a regular meeting duly held on the 2nd day of June 2021, by the following vote:

AYES: COUNCIL MEMBERS: Medina Dirksen, Biala, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Burnett, Berkley

ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

May 25, 2021

Item No. **8f(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 2, 2021

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2021-, SETTING ADMINISTRATIVE FINES AND A FEE FOR VIOLATION OF PROVISIONS OF TITLE 5, CHAPTER 9.16, OF THE MARINA MUNICIPAL CODE AND DIRECTING CERTAIN OTHER ACTIONS WITH REFERENCE TO “FIREWORKS VIOLATIONS”

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2021-, setting administrative fines and a fee for violation of provisions of Title 5, Chapter 9.16, of the Marina Municipal Code and directing certain other actions with reference to “Fireworks Violations.”

BACKGROUND:

At the April 20, 2021 Council meeting, the first reading of City Ordinance 2021-02 Fireworks Violations was approved. The second reading, by title only, was approved at the May 4, 2021 City Council meeting and the ordinance will go into effect 30 days after on June 3, 2021.

ANALYSIS:

The 2021-02 Ordinance did not include the fines for its violation, or a fee associated with the confiscation, storage and disposal by the City of dangerous fireworks. The fines and fee are to be set by resolution. To establish a fine structure, staff has suggested the following:

1. 1st Offense: Two hundred dollar (\$200.00) fine.
2. 2nd Offense: Within 36 months of the first offense: Four hundred dollar (\$400.00) fine.
3. 3rd Offense: Within 36 months of the first offense: One thousand dollar (\$1,000.00) fine.

The ordinance also requires cost recovery for the confiscation, storage, disposal and handling of dangerous fireworks. State Law requires the City to allocated two hundred and fifty dollars (\$250.00) or twenty five percent (25%) of any fine collected, whichever is greater, to cover cost reimbursement to the State Fire Marshall for the State Fire Marshall’s cost for transportation and disposal of dangerous fireworks. As a fee for the City’s cost for confiscation, handling and storage of these hazardous materials City staff have estimated the following; The Police Department will have one hour of an officer’s time at sixty-six dollars and forty-nine cents (\$66.49) to write an administrative citation, transport the fireworks to the storage magazine and follow up. The Fire Department will have one hour of a firefighter’s time at forty-four dollars and sixty-three cents (\$44.63) to standby for the Police Department, package the fireworks for disposal and facilitate their storage and eventual disposal. Another cost directly associated with the ordinance is for the storage magazine, which is eleven thousand, four hundred dollars (\$11,400.00).

If a person is issued a 2nd administrative citation within 36 months for violation of the same violation, the fee will increase 200% to \$400.00 and if they are issued a third administrative citation within 36 months of the first citation, a 500% increase in the fine to \$1,000.00. Each fine thereafter within the first 36 months of the first fine will be \$1,000.00 plus disposal and cost recovery per citation.

To break down the cost of the storage magazine component of the hazardous materials disposal fee for as a component of the hazardous materials disposal fee the cost of the magazine at \$11,400.00 was amortized over 10 years and estimating that 50 administrative fines a year would be issued each year. Using this methodology, a cost of twenty-two dollars and 80 cents (\$22.80) for each administrative citation which will be assessed as a part of the fee.

The cost recovery fee includes the cost of the storage magazine, the cost of the police officer and the cost of a firefighter which totals one hundred and thirty-three dollars and ninety-two cents (\$133.92).

Using this methodology, the following fine structure will be implemented:

1. 1st Offense
 - a. Fine: \$200.00
 - b. Cost Recovery \$133.92
 - Total: \$333.92
2. 2nd Offense
 - a. Fine \$400.00
 - b. Cost Recovery \$133.92
 - Total \$533.92
3. 3rd Offense
 - a. Fine \$1,000.00
 - b. Cost Recovery \$ 133.92
 - Total \$1,133.92

When Council approved the ordinance, Staff was directed to engage with volunteers to identify and arrange for designation of areas within the City for the discharge of safe and sane fireworks which may be legally discharged within the City. Staff is compiling a list and will have a list made public before the sale of fireworks begins.

Staff has also been directed to develop criteria for a procedure for a Hearing Officer through Restorative Justice who at his or her discretion can require an offender to perform community service as an alternative to and in lieu of the payment of an administrative fine. While this program is being worked on, it will not be ready for this July 4th holiday.

FISCAL IMPACT:

The Illegal Fireworks ordinance is intended to be revenue neutral to the City. The City does have the upfront the cost \$11,400.00 for the magazine container utilized to store the fireworks which is amortized over 10 years before being paid back.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Doug McCoun
Fire Chief
City of Marina

REVIEWED/CONCUR:

Tina Nieto
Chief of Police
City of Marina

Layne P. Long
City Manager
City of Marina